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JUDICIAL PANEL ON
MULTIDISTRICT
LITIGATION

BEFORE THE JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

IN RE:	**ONLINE DVD RENTAL ANTITRUST LITIGATION**	))	**MDL No. 2029**

JOINT RESPONSE IN SUPPORT OF AMENDED MOTION TO TRANSFER BY FORTY-THREE PLAINTIFFS IN THIRTY-TWO RELATED ACTIONS

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Pursuant to Rule 7.2(c) of this Panel's Rules of Procedure, Respondents[1] hereby support the Amended Motion to Transfer filed by Jonathan Groce and Susan Horowitz on January 21, 2009. Respondents agree that the *Online DVD Rental Antitrust Litigation* should be centralized in the Northern District of California before the Honorable Phyllis J. Hamilton or, if necessary, before another judge of that court.

PRELIMINARY STATEMENT

These dozens of cases unquestionably should be consolidated. They all are actions by Netflix subscribers who allege the same conspiracy and scheme to allocate markets and monopolize, as first articulated by the initial *Resnick* complaint filed in the Northern District of California. All allege that two San Francisco Bay Area companies, Netflix, Inc. and Walmart.com USA LLC, along with Wal-Mart Stores, Inc., conspired to eliminate competition in the market for online rentals of DVDs in violation of federal antitrust law. They all seek the same monetary and injunctive relief on behalf of themselves and a nationwide class of consumers. This is the sort of case that this Panel routinely has consolidated.

Once consolidated, every relevant factor points to the Northern District of California as the transferee forum. The first case, *Resnick, et al. v. Walmart.com USA LLC, et al.* (N.D. Cal. No. 09-0002-PJH, filed January 2, 2009) (Hamilton, J.), was brought in the Northern District of California by six plaintiffs, from San Francisco and elsewhere, on behalf of a nationwide class. Netflix, which instigated the conspiracy, is located in that district, as is Walmart.com. The

[1] The 43 Respondents, who are Plaintiffs in 32 of the 49 pending related actions, are identified in the List of Respondents in Support of the Amended Motion to Transfer, which is attached hereto as Exhibit A. The Schedule of Related Actions is attached hereto as Exhibit B. Respondents also are aware of two other groups of Plaintiffs who support centralization in the Northern District. First, at least three other Plaintiffs will be filing related actions in the near term in the Northern District and support centralization there. Second, a number of other Plaintiffs have already filed in the Northern District and support centralization there, but have chosen to file their own motion in support of that result.

substantial majority of witnesses are located there. The Northern District of California is well-equipped to handle a case such as this. *Resnick* was assigned to the Honorable Phyllis J. Hamilton, to whom this Panel has sent a prior antitrust class action, *In Re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 228 F. Supp. 2d 1379, 1381 (J.P.M.L. 2002), which has been conducted in a just and efficient manner. The direct purchaser portion of that case has been completely resolved and the remaining portion of the case is well on its way to a final disposition.

The vast majority of plaintiffs in the subsequent actions also filed in San Francisco. Judge Hamilton has related all but two of the actions filed in the Northern District thus far and has transferred them to her docket, currently thirty-two actions in all. Judge Hamilton has already scheduled a case management conference for April 9, 2009, and the parties have been ordered to meet and confer at least one week prior to that.[2] Coordination of these actions, therefore, is already underway in her court. Other plaintiffs have filed in several disparate jurisdictions, none of which has remotely the number of cases or the same connection to this action as does the Northern District of California.[3]

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[2] *See Order Setting Case Management Conference*, Case No. C 09-0002, Dkt. No. 70 (Feb. 2, 2009) (setting Rule 16(b) conference for April 9th in San Francisco in *Resnick* and the 20 cases that were then related to *Resnick* by Judge Hamilton) (attached hereto as Exhibit C).

[3] *See* Exhibit B, Schedule of Related Actions, at lines 35-49. Other than in the Northern District of California, related actions are pending in the following jurisdictions: Western District of Washington (1 case), District of Minnesota (1 case), District of New Hampshire (1 case), Eastern and Middle Districts of Louisiana (1 case each), District of Vermont (1 case), Northern District of Alabama (2 cases), Southern District of West Virginia (1 case), Northern and Southern Districts of Illinois (1 case each), Southern District of Indiana (1 case), Eastern District of New York (1 case), Middle District of Florida (1 case), and the Northern District of Ohio (1 case). The Plaintiffs in the Indiana, New Hampshire, Vermont, and Washington actions support centralization in the Northern District of California.

ARGUMENT

I. RESPONDENTS AGREE THAT CONSOLIDATION OF THE *ONLINE DVD RENTAL ANTITRUST LITIGATION* IS APPROPRIATE

These related actions readily satisfy the criteria under Section 1407(a) for consolidation in a single forum. Such consolidation "will eliminate duplicative discovery; prevent inconsistent pretrial rulings, including with respect to class certification; and conserve the resources of the parties, their counsel and the judiciary." *In re Set-Top Cable TV Box Antitrust Litig.*, MDL No. 1995, 2008 U.S. Dist. LEXIS 100789, at *2 (J.P.M.L. Dec. 12, 2008). Like so many prior antitrust class actions this Panel has centralized, the *Online DVD Rental Antitrust* actions "present overlapping and, in many instances, nearly identical factual allegations that will likely require duplicative discovery and motion practice. Centralizing these actions under Section 1407 will ensure streamlined resolution of this litigation to the overall benefit of the parties and the judiciary." *In re BP Prods. N. Am., Inc., Antitrust Litig. (No. II)*, 560 F. Supp. 2d 1377, 1379 (J.P.M.L. 2008).

II. RESPONDENTS AGREE THAT THE NORTHERN DISTRICT OF CALIFORNIA IS THE MOST APPROPRIATE TRANSFEREE DISTRICT

Respondents agree that centralization in the Northern District of California before Judge Hamilton would serve the convenience of parties and witnesses, and would promote the just and efficient conduct of the actions. The *Online DVD Rental Antitrust Litigation* is "already proceeding apace before an able judge experienced in the management of complex and multidistrict litigation; and the district is well equipped with the resources that this complex antitrust docket is likely to require." *In re Int'l Air Transp. Surcharge Antitrust Litig.*, 460 F. Supp. 2d 1377, 1379 (J.P.M.L. 2006).

A. The Northern District Of California Is The Most Appropriate Transferee District

The Northern District of California satisfies all relevant factors considered by this Panel. First, two of the three Defendants, Netflix and Walmart.com, are headquartered in the San Francisco Bay Area. Witnesses and documents, therefore, are overwhelmingly located in that district.[4] Although one of the two Walmart entities is not headquartered in the Bay Area, that is outweighed by the fact that Walmart.com, the entity that had immediate responsibility for the online DVD rental business, is headquartered in the Bay Area. More importantly, Netflix, which also is located in the Bay Area, at Los Gatos, California, is central to this case. The class consists of Netflix subscribers. While Walmart.com exited the market in 2005, Netflix has remained in the online market, and, indeed, Netflix has since monopolized that market. Thus, analyses of antitrust injury and damages necessarily will focus heavily on the prices charged, and competition faced, by Netflix since Walmart.com exited the market.

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[4] *See, e.g., In re Chocolate Confectionary Antitrust Litig.*, 542 F. Supp. 2d 1376, 1377 (J.P.M.L. 2008) (selecting transferee district "[b]ecause defendant Hershey's worldwide headquarters are located there, and several of the defendants maintain a presence in or near that district, relevant documents and witnesses are likely located in that area"); *In re Set-Top Cable TV Box Antitrust Litig.*, MDL No. 1995, 2008 U.S. Dist. LEXIS 100789, at *2-3 (J.P.M.L. Dec. 12, 2008) (selecting transferee district since defendant is "headquartered there, and relevant documents and witnesses will likely be located in that district"); *In re Potash Antitrust Litig. (No. II)*, MDL No. 1996, 2008 U.S. Dist. LEXIS 99088, at *2-3 (J.P.M.L. Dec. 2, 2008); (centralizing in Northern District of Illinois where "two defendants are headquartered in that district, and relevant documents and witnesses may be located there"); *In re Flat Glass Antitrust Litig.*, 559 F. Supp. 2d 1407, 1408 (J.P.M.L. 2008) (centralizing in district where "defendant PPG is headquartered . . . and relevant documents and witnesses will likely be found"); *In re Korean Air Lines Co. Antitrust Litig.*, 528 F. Supp. 2d 1372, 1373 (J.P.M.L. 2007) (centralizing in Central District of California where "both defendants maintain their primary domestic office in Los Angeles, where discovery may be found"); *In re Digital Music Antitrust Litig.*, 444 F. Supp. 2d 1351, 1352 (J.P.M.L. 2006) (centralizing in district where "most defendants are headquartered"); *In re Live Concert Antitrust Litig.*, 429 F. Supp. 2d 1363 (J.P.M.L. 2006) (centralizing in district "likely to provide a substantial number of witnesses and documents" because "business whose conduct is at issue in the actions is now headquartered there"); *In re Ditropan XL Antitrust Litig.*, 429 F. Supp. 2d 1364, 1366 (J.P.M.L. 2006) (centralizing in Northern District of California where "many of the relevant witnesses and documents are likely located"); *In re Apple iPod Nano Prods. Liab. Litig.*, 429 F. Supp. 2d 1366, 1368 (J.P.M.L. 2006) ("The Northern District of California is a likely source of relevant documents and witnesses inasmuch as Apple's headquarters are located there.").

Second, the original and first-filed case was filed in the Northern District of California.[5] This factor has great importance here. Unlike cases following a government investigation, where the first-filed case is merely the winner of the race to the courthouse, the first-filed case was based on the *Resnick* plaintiffs' extensive investigation and legal analysis. The *Resnick* plaintiffs chose the Northern District of California after careful consideration, unconstrained by any need to win a race to the courthouse. Equity weighs heavily in favor of the *Resnick* plaintiffs' choice of forum.

Third, the overwhelming majority of the other actions—thirty-four of forty-nine—have been filed (and are pending) in the Northern District, with the remainder scattered among a number of other jurisdictions that have no nexus to the litigation except possibly for the parochial interests of counsel or named plaintiffs.[6]

Fourth, the cases in the Northern District of California are the most advanced. Judge Hamilton already has related thirty-two cases, transferred them to herself, and scheduled a case

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5 *See, e.g., In re Webkinz Antitrust Litig.,* 582 F. Supp. 2d 1380, 1381 (J.P.M.L. 2008) (centralizing in district of "first-filed" case); *In re Marine Hose Antitrust Litig.*, 31 F. Supp. 2d 1381, 1382 (J.P.M.L. 2008) (centralizing in district of "first-filed" case); *In re Orthopaedic Implant Device Antitrust Litig.*, 483 F. Supp. 2d 1355, 1357 (J.P.M.L. 2007) (centralizing in court where "first-filed action is pending"); *In re Household Goods Movers Antitrust Litig.*, 502 F. Supp. 2d 1356, 1357 (J.P.M.L. 2007) (centralizing in district where "first-filed and more advanced action is pending"); *In re Methyl Methacrylate Antitrust Litig.*, 435 F. Supp. 2d 1345, 1347 (J.P.M.L. 2006) (centralizing in district "where the first filed and largest number of actions are already pending").

6 *See, e.g., In re Processed Egg Prods. Antitrust Litig.*, MDL No. 2002, 2008 U.S. Dist. LEXIS 99086, at *2-3 (J.P.M.L. Dec. 2, 2008) ("[f]ourteen actions [of 19] are now pending in this district"); *In re In re Static Random Access Memory (SRAM) Antitrust Litig.*, 473 F. Supp. 2d 1384 (J.P.M.L. 2007) (selecting Northern District of California is an appropriate transferee forum since "over twenty of the actions of which the Panel has been notified have been brought in that district (and no other district has more than three actions)"); *In re Carbon Black Antitrust Litig.*, 277 F. Supp. 2d 1380, 1381 (J.P.M.L. 2003) (centralizing in where "the majority of the actions are pending"); *In re Nifedipine Antitrust Litig.*, 266 F. Supp. 2d 1382, 1383 (J.P.M.L. 2003) (centralizing where "five of the seven actions are currently pending").

management conference.[7]

Finally, the San Francisco Bay Area provides an ideal forum for a case involving Internet-based businesses. It is no coincidence that Netflix and Walmart.com are located there. From the outset, that area has been the center of Internet-based commerce in this country.

B. The Panel Has Recognized The Benefits Of Selecting The Northern District Of California As A Transferee District In Numerous Antitrust Class Actions

As the Panel has observed, the Northern District of California is an "easily accessible, metropolitan district," *In re Compression Labs, Inc., Patent Litig.*, 360 F. Supp. 2d 1367, 1368-1369 (J.P.M.L. 2005), which "is well equipped with the resources that [a] complex antitrust docket is likely to require." *In re Int'l Air Transp. Surcharge Antitrust Litig.*, 460 F. Supp. 2d 1377, 1379 (J.P.M.L. 2006). The Panel thus can be confident that the Northern District is capable of handling the *Online DVD Rental Antitrust Litigation*, like so many prior antitrust class actions that have come before it. *See, e.g., In re TFT-LCD Antitrust Litig.*, 483 F. Supp. 2d 1353, 1354 (J.P.M.L. 2007); *In re Graphics Processing Units Antitrust Litig.*, 483 F. Supp. 2d 1356, 1357 (J.P.M.L. 2007).

C. Judge Hamilton Has Shown The Capability To Justly And Efficiently Preside Over Antitrust Class Actions

Judge Hamilton is an experienced jurist, to whom the Panel has entrusted multidistrict litigation, including a very significant series of antitrust class actions. *See In Re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 228 F. Supp. 2d 1379, 1381 (J.P.M.L. 2002).

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[7] *See, e.g., In re Fasteners Antitrust Litig.*, 536 F. Supp. 2d 1378, 1379 (J.P.M.L 2008) (centralizing in district where a "large number of actions have already been related"); *In re Pineapple Antitrust Litig.*, 342 F. Supp. 2d 1348, 1349 (J.P.M.L. 2004) ("six of the nine actions are pending in this district, have been consolidated and are proceeding apace before one judge"); *In re Rubber Chems. Antitrust Litig.*, 350 F. Supp. 2d 1366, 1367 (J.P.M.L. 2004) (centralizing in Northern District of California since "district is where the first filed and most advanced action is pending").

DRAM has largely concluded, with Judge Hamilton having already approved a final settlement of the claims of the direct purchaser class, in a case involving 18 defendants, more than half of which are headquartered in Asia and Europe. The remaining aspects of the litigation involving indirect purchaser, individual, and State claims are well on their way to final disposition. By her efficient handling of *DRAM*, which has been resolved extremely quickly for a major antitrust class action, Judge Hamilton has demonstrated that she "has the experience to steer this docket on a prudent course." *In re Transpacific Passenger Air Transp. Antitrust Litig.*, 536 F. Supp. 2d 1366, 1367 (J.P.M.L. 2008); *accord In re Set-Top Cable TV Box Antitrust Litig.*, MDL No. 1995, 2008 U.S. Dist. LEXIS 100789, at *3 (J.P.M.L. Dec. 12, 2008) (centralizing cases with a Judge having the "experience to steer this litigation on an expeditious course"); *In re Puerto Rican Cabotage Antitrust Litig.*, MDL No. 1916, 2008 U.S. Dist. LEXIS 92263, at *3 (J.P.M.L. Aug. 13, 2008) ("Eleven actions are already pending there, ten of which are before Judge Daniel R. Dominguez, who has MDL experience.").[8]

D. No Other District Has Remotely Comparable Connections To This Litigation

Although a handful of related actions and potential tag-alongs have been filed in other jurisdictions, all of those actions are based on the *Resnick* complaint and none were filed in a jurisdiction that is so "intimately connected," *Mun. Derivatives Antitrust Litig.*, 560 F. Supp. 2d at 1387, to this litigation. For example, one law firm filed cases in the Eastern and Middle Districts of Louisiana and the only argument it can muster in support of those forums is that they are automated and capable of handling a complex case. *See Response of Katie Hotard*, Dkt. No.

[8] While Judge Hamilton is certainly able to handle this litigation, and the remaining *DRAM* litigation has shrunk to the point where a second MDL likely would not unduly burden her, the relevant factors all point to the Northern District of California even if Judge Hamilton is not available for this case. There are many distinguished jurists on that court with considerable experience in complex litigation and MDLs in particular.

4, at 2 (Feb. 9, 2009). The Northern District of California has a median time to resolution of civil cases comparable to, if not faster than, most of the outlier districts and none achieves substantially better results. *See* ADMINISTRATIVE OFFICE OF THE U.S. COURTS, FEDERAL JUDICIAL CASELOAD STATISTICS, TABLE C-5.

Indeed, the other forums appear (and, in some cases, are explicitly known) to have been chosen to suit counsel's strategic objective of gaining an entrée into the management of this case, rather than any principled connection to the case. Such "parochial" interests are not a factor in deciding the appropriate transferee district. The center of gravity of these actions is the Bay Area; no jurisdiction has the unique nexus with the allegations or is any better equipped to handle these actions than is the Northern District of California.

Moreover, three tag-along cases have been filed in state courts—all in California. Having the federal case centralized in the Northern District of California would facilitate coordination between the federal and California state court cases. *See In re General Motors Corp. Securities & Derivative Litig.*, 429 F. Supp. 2d 1368 (J.P.M.L. 2006) (explaining that centralizing in "situs of related state court proceedings . . . carries the added benefit of fostering coordinated discovery between the federal and state proceedings, should such a need arise"); *see also In re Lorazepam & Clorazepate Antitrust Litig.*, MDL No. 1290, 1999 U.S. Dist. LEXIS 12574, at *4 (J.P.M.L. Aug. 11, 1999) (centralizing in district where "plaintiffs in many of the related state court actions have agreed to coordinate discovery").

CONCLUSION

For the foregoing reasons, the *Online DVD Rental Antitrust Litigation* should be centralized pursuant to 28 U.S.C. § 1407 in the Northern District of California before the Honorable Phyllis J. Hamilton.

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EXHIBIT A

RESPONDENTS IN SUPPORT OF THE AMENDED MOTION TO TRANSFER TO THE NORTHERN DISTRICT OF CALIFORNIA

	RESPONDENT	CASE NUMBER	DISTRICT OF ORIGIN
1.	Andrea Resnick	3:09-cv-00002	N.D. Cal.
2.	Gary Bunker	3:09-cv-00002	N.D. Cal.
3.	John Haley	3:09-cv-00002	N.D. Cal.
4.	Amy Latham	3:09-cv-00002	N.D. Cal.
5.	Eric Roslansky	3:09-cv-00002	N.D. Cal.
6.	Kevin Simpson	3:09-cv-00002	N.D. Cal.
7.	Michael O'Connor	3:09-cv-00096	N.D. Cal.
8.	Sarah Endzweig	3:09-cv-00111	N.D. Cal.
9.	Christopher P. Schmitz	3:09-cv-00116	N.D. Cal.
10.	Scott Lynch	3:09-cv-00138	N.D. Cal.
11.	Sisto Abeyta	3:09-cv-00138	N.D. Cal.
12.	Allison Hancock	3:09-cv-00138	N.D. Cal.
13.	Bryan Eastman	3:09-cv-00138	N.D. Cal.
14.	Liza Sivek	3:09-cv-00156	N.D. Cal.
15.	Suzanne Slobodin	3:09-cv-00225	N.D. Cal.
16.	Katherine M. Anthony	3:09-cv-00236	N.D. Cal.
17.	Paul D. Gottfried	3:09-cv-00236	N.D. Cal.
18.	Richard J. Sheeler, Jr.	3:09-cv-00274	N.D. Cal.
19.	Cathleen Chapman	3:09-cv-00294	N.D. Cal.
20.	Michael Orozco	3:09-cv-00297	N.D. Cal.
21.	Linda Landels	3:09-cv-00340	N.D. Cal.
22.	Antonia Landels	3:09-cv-00340	N.D. Cal.
23.	Sarah E. Grime	3:09-cv-00349	N.D. Cal.
24.	Douglas Meyer	3:09-cv-00361	N.D. Cal.
25.	Laura Randall	3:09-cv-00368	N.D. Cal.
26.	Melanie Miscioscia	3:09-cv-00377	N.D. Cal.
27.	Argyre S. Patras	3:09-cv-00378	N.D. Cal.
28.	James Chatelain	3:09-cv-00391	N.D. Cal.
29.	Michael Weiner	3:09-cv-00398	N.D. Cal.
30.	Tobias L. Millrood	3:09-cv-00399	N.D. Cal.
31.	Amos Kober	3:09-cv-00400	N.D. Cal.
32.	Margarita LaCabe	3:09-cv-00402	N.D. Cal.
33.	Ranjan Roy	3:09-cv-00434	N.D. Cal.

	RESPONDENT	CASE NUMBER	DISTRICT OF ORIGIN
34.	Brandon J. Bruno	3:09-cv-00445	N.D. Cal.
35.	Paige Gabay	3:09-cv-00445	N.D. Cal.
36.	Sanjay Parikh	3:09-cv-00496	N.D. Cal.
37.	Nicole Johnson	3:09-cv-00553	N.D. Cal.
38.	Christine Gannon	3:09-cv-00554	N.D. Cal.
39.	Kimberly Williams	3:09-cv-00678	N.D. Cal
40.	Stan MaGee	2:09-cv-00070	W.D. Wa.
41.	Jane Boynton	1:09-cv-00026	D.N.H.
42.	Sascha Mayer	1:09-cv-00028	D. Vt.
43.	Martha Karatz	1:09-cv-00136	S.D. Ind.

EXHIBIT B

SCHEDULE OF RELATED ACTIONS

	CASE TITLE	DATE FILED	CASE NO.	DISTRICT	DIVISION	JUDGE
1.	Andrea Resnick, Gary Bunker, John Haley, Amy Latham, Eric Roslansky, and Kevin Simpson, on behalf of themselves and others similarly situated, *Plaintiffs* v. Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	1/2/09	3:09-cv-00002	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
2.	Michael O'Connor, on behalf of himself and others similarly situated, *Plaintiff* v. Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*.	1/9/09	3:09-cv-00096	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
3.	Sarah Endzweig, *Plaintiff* v. Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	1/9/09	3:09-cv-00111	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
4.	Christopher P. Schmitz, on behalf of himself and all others similarly situated, *Plaintiff* v. Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	1/9/09	3:09-cv-00116	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton

	CASE TITLE	DATE FILED	CASE NO.	DISTRICT	DIVISION	JUDGE
5.	Scott Lynch, Sisto Abeyta, Allison Hancock, and Bryan Eastman, on behalf of themselves and others similarly situated, *Plaintiffs* v. Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	1/12/09	3:09-cv-00138	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
6.	Jonathan Groce and Susan Horowitz, on behalf of themselves and others similarly situated, *Plaintiffs* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	1/12/09	3:09-cv-00139	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
7.	Liza Sivek, on behalf of herself and all others similarly situated, *Plaintiff* v. Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	1/13/09	3:09-cv-00156	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
8.	Armond Faris, on behalf of himself and others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	1/14/09	3:09-cv-00180	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
9.	Suzanne Slobodin, on behalf of herself and all others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	1/16/09	3:09-cv-00225	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton

	CASE TITLE	DATE FILED	CASE NO.	DISTRICT	DIVISION	JUDGE
10.	Katherine M. Anthony and Paul D. Gottfried, on behalf of themselves and others similarly situated, *Plaintiffs* v. Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	1/20/09	3:09-cv-00236	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
11.	Melanie Polk-Stamps, individually, on behalf of Herself and on behalf of all others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	1/20/09	3:09-cv-00244	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
12.	Richard J. Sheeler Jr., on behalf of himself and others similarly situated, *Plaintiff* v. Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	1/22/09	3:09-cv-00274	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
13.	Cathleen Chapman, on behalf of herself and all others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	1/22/09	3:09-cv-00294	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
14.	Michael Orozco, on behalf of himself and others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	1/22/09	3:09-cv-00297	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton

	CASE TITLE	DATE FILED	CASE NO.	DISTRICT	DIVISION	JUDGE
15.	Linda Landels and Antonia Landels, on behalf of themselves and all others similarly situated, *Plaintiffs* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	1/26/09	3:09-cv-00340	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
16.	Sarah E. Grime, on behalf of herself and all others similarly situated, *Plaintiff* v. Netflix, Inc., Walmart.com USA LLC, and Wal-Mart Stores, Inc., *Defendants*	1/26/09	3:09-cv-00349	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
17.	Douglas Meyer, on behalf of himself and others similarly situated, *Plaintiff* v. Walmart.com USA LLC; Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	1/26/09	3:09-cv-00361	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
18.	Laura Randall, on behalf of themselves and all others similarly situated, *Plaintiff* v. Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	1/27/09	3:09-cv-00368	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
19.	Melanie Miscioscia, on behalf of herself and all others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	1/27/09	3:09-cv-00377	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton

	CASE TITLE	DATE FILED	CASE NO.	DISTRICT	DIVISION	JUDGE
20.	Frank Hirsch, on behalf of himself and all others similarly situated, *Plaintiff* v. Netflix, Inc., Walmart.com USA LLC, and Wal-Mart Stores, Inc., *Defendants*	1/27/09	3:09-cv-00375	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
21.	Argyre S. Patras, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	1/27/09	3:09-cv-00378	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
22.	James Chatelain, on behalf of himself and all others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	1/28/09	3:09-cv-00391	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
23.	Michael Weiner, on behalf of himself and all others similarly situated, *Plaintiff* v. Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	1/28/09	3:09-cv-00398	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
24.	Tobias L. Millrood, on behalf of himself and all others similarly situated, *Plaintiff* v. Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	1/28/09	3:09-cv-00399	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton

	CASE TITLE	DATE FILED	CASE NO.	DISTRICT	DIVISION	JUDGE
25.	Amos Kober, On Behalf of Himself and All Others Similarly Situated, *Plaintiff* v. Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	1/28/09	3:09-cv-00400	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
26.	Margarita LaCabe, on behalf of herself and all others similarly situated, *Plaintiff* v. Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	1/28/09	3:09-cv-00402	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
27.	Ranjan Roy, on behalf of himself and all others similarly situated, *Plaintiff* v. Netflix, Inc., Walmart.com USA LLC, and Wal-Mart Stores, Inc., *Defendants*	1/29/09	3:09-cv-00434	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
28.	Brandon J. Bruno and Paige Gabay, on behalf of themselves and others similarly situated, *Plaintiffs* v. Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	1/30/09	3:09-cv-00445	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
29.	Ashkun Zaker, on behalf of himself and all others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	1/30/09	3:09-cv-00447	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton

	CASE TITLE	DATE FILED	CASE NO.	DISTRICT	DIVISION	JUDGE
30.	Sanjay Parikh, Individually and on Behalf of All Others Similarly Situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	2/3/09	3:09-cv-00496	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
31.	Richard Cocadiz, individually and on behalf of all others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., Walmart.com USA LLC, Reed Hastings, Jr., and John E. Fleming, *Defendants*	2/4/09	3:09-cv-00508	Northern District of California	San Francisco	Hon. Maria Elena-James
32.	Nicole Johnson, on behalf of herself and others similarly situated, *Plaintiff* v. Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	2/5/09	3:09-cv-0553	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
33.	Christine Gannon, on behalf of herself and others similarly situated, *Plaintiff* v. Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	2/5/09	3:09-cv-0554	Northern District of California	San Francisco	Hon. Phyllis J. Hamilton
34.	Kimberly Williams, on behalf of herself and all others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	2/17/09	3:09-cv-00678	Northern District of California	San Francisco	Hon. Bernard Zimmerman

	CASE TITLE	DATE FILED	CASE NO.	DISTRICT	DIVISION	JUDGE
35.	Stan MaGee, individually and on behalf all others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	1/16/09	2:09-cv-00070	Western District of Wash-ington	Seattle	Hon. John C Coughenour
36.	Paul Michalski, Kathleen Hellevik, and Kevin Arendt, on behalf of themselves and all others similarly situated, *Plaintiffs* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	1/23/09	0:09-cv-00158	District of Minnesota	St. Paul	Hon. Donovan W. Frank
37.	Jane L. Boynton, on behalf of herself and all others similarly situated, *Plaintiff* v. Walmart.com USA LLC; Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	1/27/09	1:09-cv-00026	District of New Hampshire	Concord	Hon. Joseph N. LaPlante
38.	Sascha Mayer, on behalf of herself and all others similarly situated, *Plaintiff* v. Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	1/28/09	1:09-cv-00028	District of Vermont	Brattleboro	Hon. J. Garvin Murtha
39.	Salvadore Christina, Jr., on behalf of himself and all others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	2/2/09	3:09-cv-00059	Middle District of Louisiana	Baton Rouge	Hon. Ralph E. Tyson

	CASE TITLE	DATE FILED	CASE NO.	DISTRICT	DIVISION	JUDGE
40.	Katie Hotard, on behalf of herself and all others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	2/3/09	2:09-cv-01938	Eastern District of Louisiana	New Orleans	Hon. Helen G. Berrigan
41.	Myles Levin, on behalf of himself and others similarly situated, *Plaintiff* v. Walmart.com USA LLC, Wal-Mart Stores, Inc., and Netflix, Inc., *Defendants*	2/5/09	1:09-cv-00744	Northern District of Illinois	Chicago	Hon. Wayne R. Anderson
42.	Robert Darren Touchton, on behalf of himself and all others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	2/6/09	2:09-cv-00241	Northern District of Alabama	Southern	Hon. William M. Acker
43.	Charles Kopera, on behalf of himself and all others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	2/6/09	2:09-cv-00242	Northern District of Alabama	Southern	Hon. John E. Ott
44.	Brandon and Jennifer Walters, husband and wife, on behalf of themselves and all others similarly situated, *Plaintiffs* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	2/9/09	2:09-cv-00110	Southern District of West Virginia	Charleston	Hon. Jane Magnus-Stinson

	CASE TITLE	DATE FILED	CASE NO.	DISTRICT	DIVISION	JUDGE
45.	Martha Karatz, on behalf of herself and all others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	2/9/09	1:09-cv-00136	Southern District of Indiana	Indiana-polis	Hon. William T. Lawrence
46.	Aimee C. Bowles, on behalf of herself and all others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	2/12/09	8:09-cv-00250	Middle District of Florida	Tampa	Hon. James S. Moody, Jr.
47.	Stefanie Shafeek, on behalf of herself and all others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	2/13/09	1:09-cv-00617	Eastern District of New York	Brooklyn	Hon. Nicholas J. Garaufis
48.	Robert L. Wagner, individually and behalf all others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	2/16/09	3:09-cv-00360	Northern District of Ohio	Western Division	Hon. Jack Zouhary

	CASE TITLE	DATE FILED	CASE NO.	DISTRICT	DIVISION	JUDGE
49.	Burton S. Jones, individually and on behalf of all others similarly situated, *Plaintiff* v. Netflix, Inc., Wal-Mart Stores, Inc., and Walmart.com USA LLC, *Defendants*	2/17/09	3:09-cv-00131	Southern District of Illinois	East St. Louis	Hon. David R. Herndon

EXHIBIT C

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ANDREA RESNICK, et al.,

Plaintiff(s),

v.

WALMART.COM, et al.

Defendant(s).

No. C 09-0002 PJH

ORDER SETTING CASE MANAGEMENT CONFERENCE

[Reassigned Case]

This Document Also Relates to:

Michael O'Connor v. Walmart.com, et al. C 09-0096 PJH
Sarah Endzweig v. Walmart.com, et al. C 09-0111 PJH
Christopher Schmitz v. Walmart.com, et al. C 09-0116 PJH
Scott Lynch, et al. v. Walmart.com, et al. C 09-0138 PJH
Jonathan Groce, et al. v. Netflix, Inc., et al. C 09-0139 PJH
Liza Sivek v. Walmart.com, et al. C 09-0156 PJH
Armond Faris v. Netflix, Inc., et al. C 09-0180 PJH
Suzanne Slobodin v. Netflix, Inc., et al. C 09-0225 PJH
Katherine Anthony, et al. v. Walmart.com, et al. C 09-0236 PJH
Melanie Polk-Stamps v. Netflix, Inc., et al. C 09-0244 PJH
Richard Sheeler v. Walmart.com, et al. C 09-0274 PJH
Cathleen Chapman v. Netflix, Inc., et al. C 09-0294 PJH
Michael Orozco v. Netflix, Inc., et al. C 09-0297 PJH
Linda Landels, et al. v. Netflix, Inc., et al. C 09-0340 PJH
Sarah Grime v. Netlfix, Inc., et al. C 09-0349 PJH
Douglas Meyer v. Walmart.com, et al. C 09-0361 PJH
Laura Randall v. Walmart.com, et al. C 09-0368 PJH
Frank Hirsch v. Netflix, Inc., et al. C 09-0375 PJH
Melanie Miscioscia v. Netflix, Inc., et al. C 09-0377 PJH
James Chatelain v. Netlfix, Inc., et al. C 09-0391 PJH

TO ALL PARTIES AND COUNSEL OF RECORD:

The above matters having been reassigned to the Honorable Phyllis J. Hamilton. It is hereby ordered, pursuant to Fed. R. Civ. P. 16(b) and Civil L. R. 16-10, that a Case Management Conference shall be held on **April 9, 2009**, at 2:30 p.m., in Courtroom 3, 17th Floor, Federal Building, 450 Golden Gate Avenue, San Francisco, California.

Counsel shall meet and confer as required by Fed. R. Civ. P. 26(f) prior to the Case Management Conference with respect to those subjects set forth in Fed. R. Civ. P. 16(c). **Not less than seven (7) calendar days** before the conference, counsel shall file a joint case management statement addressing each of the items listed in the "Standing Order For All Judges of the Northern District -- Contents of Joint Case Management statement," which is attached to this order and can also be found on the court's website. A proposed order is not necessary. Following the conference, the court will enter its own Case Management and Pretrial Order. If any party is proceeding without counsel, separate statements may be filed by each party.

Each party shall appear personally or by counsel prepared to address all of the matters referred to in this Order and with authority to enter stipulations and make admissions pursuant to this Order. Any request to reschedule the date of the conference shall be made in writing, and by stipulation if possible, at least ten (10) calendar days before the date of the conference and must be based upon good cause.

STANDING ORDER FOR ALL JUDGES OF THE NORTHERN DISTRICT OF CALIFORNIA

CONTENTS OF JOINT CASE MANAGEMENT STATEMENT

Commencing March 1, 2007, all judges of the Northern District of California will require the identical information in Joint Case Management Statements filed pursuant to Civil Local Rule 16-9. The parties must include the following information in their statement which, except in unusually complex cases, should not exceed ten pages:

1. Jurisdiction and Service: The basis for the court's subject matter jurisdiction over plaintiff's claims and defendant's counterclaims, whether any issues exist regarding personal jurisdiction or venue, whether any parties remain to be served, and, if any parties remain to be served, a proposed deadline for service.

2. Facts: A brief chronology of the facts and a statement of the principal factual issues in dispute.

3. Legal Issues: A brief statement, without extended legal argument, of the disputed points of law, including reference to specific statutes and decisions.

4. Motions: All prior and pending motions, their current status, and any anticipated motions.

5. Amendment of Pleadings: The extent to which parties, claims, or defenses are expected to be added or dismissed and a proposed deadline for amending the pleadings.

6. Evidence Preservation: Steps taken to preserve evidence relevant to the issues reasonably evident in this action, including interdiction of any document-destruction program and any ongoing erasures of e-mails, voice mails, and other electronically-recorded material.

7. Disclosures: Whether there has been full and timely compliance with the initial disclosure requirements of Fed. R. Civ. P. 26 and a description of the disclosures made.

8. Discovery: Discovery taken to date, if any, the scope of anticipated discovery, any proposed limitations or modifications of the discovery rules, and a proposed discovery plan pursuant to Fed. R. Civ. P. 26(f).

9. Class Actions: If a class action, a proposal for how and when the class will be certified.

10. Related Cases: Any related cases or proceedings pending before another judge of this court, or before another court or administrative body.

11. Relief: All relief sought through complaint or counterclaim, including the amount of any damages sought and a description of the bases on which damages are calculated. In addition, any party from whom damages are sought must describe the bases on which it contends damages should be calculated if liability is established.

12. Settlement and ADR: Prospects for settlement, ADR efforts to date, and a specific ADR plan for the case, including compliance with ADR L.R. 3-5 and a description of key discovery or motions necessary to position the parties to negotiate a resolution.

13. Consent to Magistrate Judge For All Purposes: Whether all parties will consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment.

14. Other References: Whether the case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

15. Narrowing of Issues: Issues that can be narrowed by agreement or by motion, suggestions to expedite the presentation of evidence at trial (e.g., through summaries or stipulated facts), and any request to bifurcate issues, claims, or defenses.

16. Expedited Schedule: Whether this is the type of case that can be handled on an expedited basis with streamlined procedures.

17. Scheduling: Proposed dates for designation of experts, discovery cutoff, hearing of dispositive motions, pretrial conference and trial.

18. Trial: Whether the case will be tried to a jury or to the court and the expected length of the trial.

19. Disclosure of Non-party Interested Entities or Persons: Whether each party has filed the "Certification of Interested Entities or Persons" required by Civil Local Rule 3-16. **In addition**, each party must restate in the case management statement the contents of its certification by identifying any persons, firms, partnerships, corporations (including parent corporations) or other entities known by the party to have either: (i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding.

20. Such other matters as may facilitate the just, speedy and inexpensive disposition of this matter.

IT IS SO ORDERED.

Dated: February 2, 2009

PHYLLIS J. HAMILTON
United States District Judge